

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
ZACHARY NERO, et al.,	:	22cv1602 (DLC)
	:	
Plaintiffs,	:	ORDER
-v-	:	
	:	
UPHOLD HQ INC., et al.,	:	
	:	
Defendants.	:	
	:	
-----	X	


DENISE COTE, District Judge:

The Clerk of Court received an objection to the proposed settlement, a redacted copy of which is attached, on August 9, 2024. Accordingly, it is hereby

ORDERED that a redacted copy of the objection shall be docketed.

IT IS FURTHER ORDERED that the unredacted objection shall be provided to counsel for the parties.

Dated: New York, New York
August 16, 2024



DENISE COTE
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ZACHARY NERO, JESSE W. SMITH,
PETER MALOUPIS, JOSÉ RAMIREZ, and
GILLES BOEVI, individually and on behalf
of other similarly situated individuals,

Plaintiffs,

V.

UPHOLD HQ INC., a South Carolina corporation, JUAN PABLO THIERIOT, aka J.P. THIERIOT, an individual, and JOHN DOES 1-10, individuals,

Defendants

)
)
)
) Civil Action No. 1:22-cv-01602-BSV
)
)
)
) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT**
)
)
)
) **JURY TRIAL DEMANDED**
)
)
)
)
)

**CLASS MEMBER CAROLYN SKIDMORE'S OBJECTION TO
DEFENDANT'S FIRST SETTLEMENT OFFER, AND
CLASS MEMBER CAROLYN SKIDMORE'S FIRST COUNTER OFFER**

Introduction

The injured party named and described herein relies upon the "Made Whole Doctrine" as a basis for her objection. This equitable doctrine requires an insured to be fully compensated for damages (i.e., to be "made whole") before the insurer is entitled to recover in subrogation from the at-fault third party tortfeasor, if there be one. The main point of this equitable doctrine is intended to restore an injured party back into a position prior to an injury whenever and however possible.

First Objection

1. I, Carolyn Fern Skidmore, (hereafter, "Mrs. Skidmore", "I", "me", "my", or "mine") being a natural person, and having been a customer of Uphold HQ Inc. (hereafter, "Defendant") at the time of an unauthorized access to my Uphold account, and unauthorized withdrawal of assets on January 22nd, 2022 was made (See, Exhibits "B" - "F" infra), who having reported the same to Uphold HQ Inc. after February 25, 2021, where such report was made with the Defendant's support team on January 29th, 2022 within seven days following said unauthorized withdrawal of assets (See, "Exhibit A"), and therefore having met all essential criteria required to be a member of the class (hereafter, "Class") in the above numbered and styled cause, I am in receipt of a communication delivered via US Post from, "Uphold Class Action Settlement Claims Administrator" whose office is located at P.O. Box 25226 Santa Anna, CA 92799.

2. Said communication is presumed by Mrs. Skidmore to be in representation of the Defendant in the above numbered and styled cause, and some of it's employees, staff, or agents.

3. Said communication appears to be the Defendant's first offer to settle (hereafter, "Defendant's offer") with the named Plaintiffs (hereafter, "Plaintiffs"), and associated Class.

4. The Defendant's offer is a monetary amount ranging between \$171.00 and \$195.00 pursuant to the maximum amount allowed under an Electronic Funds Transfer Act ("EFTA") claim given the facts and circumstances surrounding this case.

5. At the time my account was compromised and an unauthorized withdrawal of assets from said account without my knowledge, my account showed I owned the following assets and in the following corresponding amounts:

<u>Assets</u>	<u>Number Of Assets Held</u>	<u>Exhibit Numbers</u>
Zilliqa (ZIL)	843.66736042454	(See, "Exhibit B")
VeChain (VET)	5,380.780978284316022287	(See, "Exhibits C")
Hedera (HBAR)	1,408.483441	(See, "Exhibits D")
Stellar (XLM)	3,419.1567420	(See, "Exhibits E")
XRP (XRP)	5,339.885105	(See, "Exhibits F")

6. All though all of the assets listed above held a higher market value at the time the assets were taken from my account than they hold at the time of drafting this objection, the Defendant's offer of \$171 - \$195 is far from equitable, and serves only to add insult to injury as the Defendant's offer falls miserably short of making Mrs. Skidmore, the Plaintiffs, and many other Class members whole.

7. Mrs. Skidmore informs the court that given the fact the Defendant is offering a settlement at all Mrs. Skidmore interprets said offer as a tacit implication of guilt, and an admission that it was in fact the Defendant's security that was breached that lead to the unauthorized withdrawal of my assets, and therefore considers any of the Defendant's denials of the same unwarranted and not withstanding. It seems the Defendant wants to penalize the Class for our loss.

Counter Offer

8. At present, Mrs. Skidmore seeks nothing beyond being made whole.

9. At present Mrs. Skidmore, and possibly the entire Class if treated in a like manner, would be willing to settle this suit if the Defendant were to deposit the following assets into Mrs. Skidmore's existing Uphold account thus equitably restoring Mrs. Skidmore back to a position in which she enjoyed prior to her loss, e.g. "made whole": (Account details available)

843.66736042454	Zilliqa (ZIL)
5,380.780978284316022287	VeChain (VET)
1,408.483441	Hedera (HBAR)
3,419.1567420	Stellar (XLM)
5,339.885105	XRP (XRP)

10. Should the defendant wisely choose to deposit the above described assets in the above described amounts to Mrs. Skidmore's existing Uphold account, and return the assets to each Class member in a like manner, which is well within the Defendant's capability, Mrs. Skidmore will consider herself made whole, and from Mrs. Skidmore's perspective there shall be no further need to continue this case to trial. HOWEVER,

11. Should the Defendant choose to reject or wish to amend Mrs. Skidmore's counter offer, Mrs. Skidmore will wish to move the court to set a trial date for this case in which the Plaintiffs and all remaining Class members should seek damages for their losses in addition to the return of their assets.

12. In order to insure the Plaintiffs and the Class are "made whole", and remain whole, it is equitable for all court costs, attorney's fees, and litigation expenses be tendered separately by the Defendant, and that such compensation shall not effect the amounts received by the Plaintiffs nor any member of the Class.

13. Due to financial constraints I cannot appear at the Final Approval Hearing on this matter.

Prayer

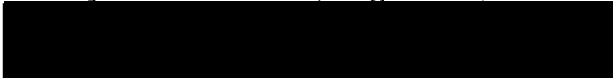
14. Make me/the Class whole.

Respectfully submitted,



Signed this the 2nd day of August, 2024

Carolyn Fern Skidmore, August 2nd, 2024



Fw: Uphold support request comment update: Accessing account

EXHIBIT A

From: Carolyn Skidmore ([REDACTED])

To: [REDACTED]

Date: Thursday, August 1, 2024 at 03:18 PM CDT

Carolyn Skidmore
Area Manager
Texian HerbaCuetical
txherbco.com
512 574 0457

----- Forwarded Message -----

From: Carolyn Skidmore <[REDACTED]>

To: Uphold Support <support@uphold.com>

Sent: Saturday, January 29, 2022 at 08:49:12 PM CST

Subject: Re: Uphold support request comment update: Accessing account

Hello,

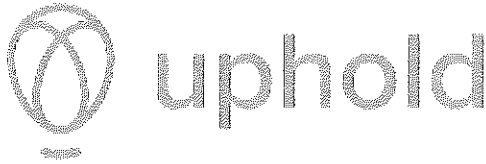
So I finally got into my uphold account and found that my balance is basically \$0 when it should be at least \$6000. It appears I have been HACKED! I would like to know what happen to my assets!? The only thing showing in \$7 of Songbird. That shows I had some XRP now where did it go! Sorry but that was 2 years of investing that are not being accounted for.

In looking at the account it shows on 1/22/2022 I traded VET to ETH which I would not do. It also shows the same for ZIL to ETH which I would not do. It also shows on 1/22/2022 I sent all my XRP to XRP ledger network. On 1/22/2022 it also shows I traded my XLM for ETH which I would not do. It also shows on that same day I traded all of my HBAR for ETH which again I would not do! Then on the same day it shows that someone tried to buy \$1000 of XRP on that Saturday from my bank account. That was the same day I was trying to get into my account because I had just deposited \$500 into my account I use to purchase crypto. That attempt to buy \$1000 of XRP bounced my PERSONAL bank account, that cause a charge of \$30 for a insufficient fund. On 1/27/2022 it shows that the \$1000 of XRP was sent to uphold adjustments account because this is the XRP someone tried to buy from MY Uphold account from my bank. So now on a Saturday night I learn my bank account has been compromised along with my Uphold account. It was that day, 1/22/2022 that I tried to log in to do that just but could not log in. I thought it was because I had not logged in often enough and when I tried to log in my Authenticator would not work. I bought a new phone and the Authenticator on that phone would not work either. I could not get in because I was being HACKED! How does this get fixed? I will contact my bank asap and put a stop on that account. I would really like to speak to a real person but that option is just not available, but should be for an International company that handles people \$\$ and assets. I can't be the only one this happen to on that day, 1/22/2022. This hack was not do to a lack of security on my end. Who ever cleaned out my account had to bypassed Upholds security. This is the only way a hacker would have access to the bank account information associated with my Uphold account. It appears that your lack of security has cost me my investment. I can't afford to start over. Please let me know what bank records and such that I need to provide. Must I file a police report with InterPol since this in International? I am in Texas in the USA. I need to be made whole. Please refer to legal department and security department to follow up on just where my assets are. Please escalate this as this has been over a week trying to get back in and the longer it has been the more damage is being done to me. Trying to get back in has been a nightmare. I can't believe that your system did not see my account was hacked! The reason I have most of my assets on Uphold is because I trusted you like so many I listen to on Youtube that do, now this happens and my trust is gone.

Carolyn Skidmore

On Saturday, January 29, 2022, 01:20:16 PM CST, Uphold Support <support@uphold.com> wrote:

##- Please type your reply above this line -##



Your uphold user support request (#1958283) has been updated:

Uphold Support (Uphold Support)

Jan 29, 2022, 7:20 PM GMT

Hi Carolyn,

My name is Luis and I'll gladly assist you, I have great news! The 2-Step Verification of your Uphold account has been successfully reset.

You won't be prompted to insert a verification code when attempting to reset the password, but once logged in, we strongly suggest you reconfigure 2-Step Verification.

- 1 – Tap “...” on the right bottom (Mobile App) or at the left sidebar (New Web Wallet)
- 2 – Tap **Settings** (Mobile app)
- 3 – Tap/click **Security**
- 4 – Click on **Enable 2-step verification**
- 5 – Scan the QR code with your Authenticator App or use the Security Key generated.
- 6 – Insert the new Verification Code to confirm the 2SV activation.

As always, if you have any questions or concerns, please let us know.

Thank you for being a valued user of Uphold.

Sincerely,

Luis and the Uphold Team

Our FAQ: <https://support.uphold.com>

Our Blog: <https://uphold.com/en/blog>

Carolyn Skidmore

Jan 23, 2022, 6:11 PM GMT

This will be a duplicate email as I sent it from the wrong email that I do not have registered with uphold. This is the email I have registered with uphold. I have not been in my account for a few weeks. Today I tried to log in but my authenticator was not recognized by uphold. I did another authenticator but it was not recognized by uphold. I did the process by adding my long number/letter info. I requested from the site to reset password, new authenticator and recover by email. That was well over 2 hours ago and have yet to receive any emails. I checked spam and both emails I use and have not received any yet. I am trying to purchase some crypto but can't log in. I understand the security issues but to have not yet received an email after 2 hours is frustrating especially watching prices bounce.

Carolyn Skidmore

If you'd like to add additional comments, please reply to this email.



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6 W. 18th St., 3rd Floor, New York, NY 10011

Uphold HQ Inc. NMLS ID No. 1269875

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[4ZZX9P-9KY3]

EXHIBIT C

Global Commun...mp4

3:01 PM 3/11/2022

Waller

Anything to Anything

Repeat

Limit

From

To

USD

Limit

Orchid
OXT

Platinum
XPT

Silver
XAG

Solana
SOL

Songbird
SBG

Stellar Lumens
XLM

Synthetic
SNX

USD Coin
USDC

VeChain
VET

XRP
XRP

Zilliqa
ZIL

\$ 0.21836
-1.76%

\$ 1,114.35
-0.05%

\$ 26.79
-0.22%

\$ 80.68
-2.45%

\$ 0.06867
-6.20%

\$ 0.17643
-2.50%

\$ 4.12369
-8.19%

\$ 1.00

\$ 0.04623
-1.1%

\$ 0.76557
-3.42%

\$ 0.04022
-4.03%

Recent activity

Jan 27, 2022

Sent XRP
to Uphold Account Adjustments

1,668.99399 XRP
\$ 1,009.57

Jan 22, 2022

Deposited XRP
from TRB DEBIT CARD ACCOUNT

1,668.99399 XRP
\$ 1,000.00

Withdraw ETH

0.49375 ETH

Transaction details

From your VET account
5.380780978284316022287 VET

To your ETH account
0.10871527146955109 ETH

Details

Market rate

1.00 ETH = 49.495.96 VET

Status

Completed

Date

January 22, 2022, 4:33:37 AM

Reservechain transaction ID
3c9f62b9-9596c-4b6da-b76f-4a1b72833564

1

50.04022

0.120148973756955494 ETH

January 22, 2022, 4:33:14 AM

96406689-056-457-905-2660163077

FROM TRS DEBIT CARD ACCOUNT

Wendrew ETH

0.49375 ETH

Global Communities.mpa

Show all

3:02 PM
3/11/2022

EXHIBIT E

Global Communi...mp4

3:04 PM
3/11/2022

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Wallet

Recent activity

Jan 27, 2022

Sent XRP
To Uphold Account Adjustments

1,668.99399 XRP
\$ 1,009.57

Jan 22, 2022

Deposited XRP
From TRS DEBIT CARD ACCOUNT

1,668.99399 XRP
\$ 1,000.00

Withdraw ETH

0.49375 ETH

Orchid
OXT

\$ 0.21836
-1.76%

Platinum
XPT

\$ 1,114.35
-0.05%

Silver
XAG

\$ 26.79
-0.22%

Solana
SOL

\$ 80.68
-2.45%

Songbird
SBG

\$ 0.06867
-8.22%

Stellar Lumens
XLM

\$ 0.17543
-2.50%

Synthetic
SNX

\$ 4.12369
-5.19%

USD Coin
USDC

\$ 1.00

VeChain
VET

\$ 0.04623
-1.11%

XRP

\$ 0.76537
-3.45%

Zilliqa
ZIL

\$ 0.04022
-4.08%

Transaction details

From your XLM account
3.4191567420 XLM

Details

Market rate
100 ETH = 13,671.30 XLM

Status
Completed

Date
January 22, 2022, 4:32:51 AM

Reversechain transaction ID
6d4c70572a064f96aefb9a3935b27b09

Anything to Anything

Repeat

Limit

Transacted

From

To

USD

>

[illegible]

Jan 22, 2022

None
Dash

Show all X